

OCT 30 2013

JULIA C. DUDLEY, CLERK
BY: *[Signature]*
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA,

) CASE NO. 5:06CR00041-001

) (CASE NO. 5:13CV80669

)

v.

) MEMORANDUM OPINION

)

)

ADELSON MICHEL,

) By: Glen E. Conrad

Defendant.

) Chief United States District Judge

)

Adelson Michel, a federal inmate proceeding pro se, has filed a motion (ECF No. 1032) asking the court to reconsider its October 18, 2013 order, which denied his motion for discovery on the ground that he had no pending action. Michel now asserts that his discovery motion (ECF No. 1013) also included a “new claim” under 28 U.S.C. § 2255, asserting that his conviction should be overturned because the indictment was “null and void.” The record indicates, however, that Michel previously filed a § 2255 motion challenging the judgment in this case.¹ Therefore, his “new claim” as presented in the discovery motion (ECF No. 1013) must be construed as a subsequent § 2255 motion and summarily dismissed under § 2255(h) as successive.² The court will so order.

This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit. Michel offers no indication that he has obtained certification from the court of appeals to file a second or successive § 2255 motion. Therefore, the § 2255 motion (ECF No. 1013) will be summarily

¹ See United States v. Michel, 849 F. Supp.2d 649 (W.D. Va. 2012), appeal dismissed, 479 F. App'x 534 (4th Cir. 2012).

² See Gonzales v. Crosby, 545 U.S. 524, 531-325 (2005) (authorizing district court to construe post-conviction motion raising new challenges to underlying conviction as successive § 2255 motion to prevent defendants from circumventing procedural limits of § 2255).

dismissed without prejudice as successive,³ and Michel's motion (ECF No. 1032) seeking reconsideration of the denial of his discovery request will be denied as moot. A separate order will be entered this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to the defendant.

ENTER: This 29th day of October, 2013.

John C. Coughenour

Chief United States District Judge

³ Pursuant to Rule 4 of the Rules Governing § 2255 Proceedings, the court may summarily dismiss a § 2255 motion where "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief."